

REMARKS

Claims 1-40 and 42 are pending in the application. Claims 1-40 and 42 were rejected.

CLAIM REJECTIONS UNDER 35 U.S.C. § 112

1) Claim 42 was rejected under 35 U.S.C. § 112, first paragraph, for failure to comply with the written description requirement. The basis for the Examiner's rejection is that "The specification and drawings are silent on segmenting of variable length historic data, comparison of segmented historic data, comparison of unequal length of historic data and comparison of non-homogeneous type data." Applicant respectfully disagrees.

The basis for this "new subject matter" rejection is unclear as the subject matter the Examiner deems "new matter," such as "segmented historic data," is not recited in the claims. Thus, Applicant respectfully submits there is no new matter in claim 42 and believes there is no applicable rejection under 35 U.S.C. § 112, first paragraph, to claim 42. Accordingly, since there have been no other grounds of rejection regarding claim 42, Applicant respectfully requests that the rejection be withdrawn and that claim 42 be allowed.

2) Claim 7 was rejected under 35 U.S.C. § 112, second paragraph, because the term "rejuvenating" was deemed "a relative term and renders the claim indefinite." The Examiner states, "Rejuvenation or restarting of the software is a discontinuous operation and teaches away from the intent of claim 1 wherein resources are monitored over time ... a shutdown monitors nothing. Restarting means that all resource utilization returns to zero ... stops. The intent of claim 1 is for continuous operation as indicated by 'monitoring over a period of time, a contemporaneous resource utilization.'" Applicant respectfully disagrees.

This rejection is fundamentally flawed for several reasons. "Monitoring, over a period of time" is not a perpetual operation but is performed for the period of time. The method of claim 1

provides method steps such that monitoring yields obtained results that prediction is based upon. In the case of claim 7, if the obtained results warrant, an additional step of rejuvenating the software occurs. It is irrelevant whether the monitoring operation is continuous or discontinuous. At some point in time, other method steps occur, whether or not monitoring continues to occur. Monitoring may be carried out by a system other than the computer system or software that is to be monitored and rejuvenated.

Also, the Examiner appears to be reading into claim 1 limitations that are not recited in claim 1 or limitations in the specification that would limit the scope of claim 1. The Examiner states that the word “monitoring” in one of the claim elements implies that the “intent” of claim 1 is that it be a continuous operation and that the method step of rejuvenating the software in claim 7 is a discontinuous operation and goes against the “intent” of claim 1.

Additionally, the Examiner has equated rejuvenation with restarting and then restarting with system shutdown. Applicant does not disclose the discontinuous operation of shutdown as Examiner has characterized rejuvenating. Applicant’s disclosure does not use the word “shutdown” to describe rejuvenation. Applicant has incorporated by reference commonly assigned U.S. Patent Application Ser. No. 09/706,737, now U.S. Patent No. 6,993,458, entitled "Method and Apparatus for Preprocessing Technique for Forecasting in Capacity Management, Software Rejuvenation and Dynamic Resource Allocation Applications", filed on Nov. 7, 2000. As disclosed, rejuvenation does not require a shutdown of the computer system. The computer software may be restarted and initialized. Additionally, it is irrelevant whether there is a shutdown of the computer system since, as stated above, the method is not necessarily implemented by the same computer system as is monitored and rejuvenated.

Accordingly, Applicant believes that claim 7 satisfies the requirements under 35 U.S.C § 112, second paragraph, and respectfully requests withdrawal of the rejection.

CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claims 1-41 were rejected under 35 U.S.C. § 102(e), as being anticipated by Sweet, et al., U.S. Patent No. 6,836,800 (hereinafter Sweet). The rejections are respectfully traversed.

Regarding claim 1, the Examiner states that Sweet anticipates, *inter alia*, “predicting the subsequent resource utilization, based upon the monitored values of the contemporaneous resource utilization and the number of active devices (Sweet, c 3, l 25-41; Examiner’s Note (EN): para 11 applies; the number of active devices is integrated into the system operation as shown in Fig. 1).” Applicant respectfully disagrees.

Sweet discloses that “data is gathered about the network (step 1010), the gathered data is analyzed to determine whether a signature exists (step 1020), and if a signature exists, the signature is used for purposes such as generating alarms for unusual activity (or inactivity), reporting on the status of the network, and planning changes such as upgrades to the network (step 1030).” Sweet further discloses that “The signature detection software ... derives signature data 40 and other data 42 from the gathered data. The other data may include data needed for ... trending predictions.” Sweet suggests that “trending” relates to “the capacity or configuration of the network.” However, Sweet does not disclose “predicting the subsequent resource utilization, based upon the monitored values of the contemporaneous resource utilization and the number of active devices.” Applicant respectfully submits that analyzing data, generating alarms, reporting status and planning changes do not constitute or suggest predicting subsequent resource utilization. Furthermore, Applicant respectfully submits that trending predictions as disclosed by Sweet are predictions of network performance about the capacity or configuration of the

network, and not “predicting the subsequent resource utilization, based upon the monitored values of the contemporaneous resource utilization and the number of active devices.” Sweet indicates that the “other data” that may include data needed for trending predictions is derived from signature detection software and not from “contemporaneous resource utilization and the number of active devices.” Accordingly, Applicant believes claim 1 is neither anticipated nor rendered obvious in light of Sweet and is allowable over the prior art of record.

Regarding claim 21, the Examiner states that Sweet anticipates, *inter alia*, “identifying resource saturation, based upon the monitored values of the resource utilization and the number of active devices (Sweet, c 4, l 42-58; EN: signature detection establishes monitored values for the active devices).” Furthermore, in the Examiner’s response to Applicant’s November 4, 2005 arguments regarding claim 21, the Examiner states that ““identifying resource saturation” is equivalent to an “alarm threshold” which Sweet teaches @ c 2:66.” Applicant respectfully disagrees.

Sweet discloses “The signature detection software includes statistical analysis software 38 that derives signature data 40 and other data 42 from the gathered data. The other data may include data needed for subsequent calculations, or data for statistical correlation or for trending predictions.” However, Sweet does not disclose “identifying resource saturation, based upon the monitored values of the resource utilization and the number of active devices.”

In the cited passage of the Examiner’s response, Sweet discloses “...the signature may be used to establish an alarm threshold (i.e., an alert threshold) to allow a network manager to be alerted automatically to unusually high data traffic, due perhaps to a network malfunction or unauthorized use of the network...” However, Sweet does not disclose that the alarm threshold is related to “resource utilization and the number of active devices.” “High data traffic,” “network

malfunction” or “unauthorized use” do not equate with “resource utilization and the number of active devices.” Accordingly, Applicant believes claim 21 is neither anticipated nor rendered obvious in light of Sweet and is allowable over the prior art of record.

Regarding claims 31 and 40, the Examiner states that Sweet anticipates, *inter alia*, “predicting the effects of adding the new device, based upon the monitored values of the resource utilization and the number of active devices (Sweet, c 2, l 5-20; EN: such is automatic adaptation).” Applicant respectfully disagrees.

Sweet discloses “... resource usage can be tracked ... enabling highly meaningful analysis and presentation of information. In the case of a network, performance thresholds can be automatically adapted and kept current, ... Rich details of network traffic patterns can be exposed and alert and alarm thresholds can be automatically tuned, allowing effective bandwidth management, capacity planning, and development of realistic service level expectations based on objective information.” However Sweet does not disclose “predicting the effects of adding the new device, based upon the monitored values of the resource utilization and the number of active devices.” The Examiner equates Sweet’s “performance thresholds can be automatically adapted” with Applicant’s “predicting the effects of adding the new device.” Applicant respectfully disagrees with the Examiner’s apparent belief that “automatically adapting” is synonymous with “predicting the effects of adding the new device.” Automatically adapting refers to performance thresholds and not to “new devices.” Accordingly, Applicant believes claims 31 and 40 are neither anticipated nor rendered obvious in light of Sweet and are allowable over the prior art of record.

Regarding claim 38, the rejection, wherein the Examiner states that Sweet discloses, *inter alia*, predicting the effects of adding the new device, based upon the monitored values of the

resource utilization and the number of active devices (Sweet, c2, l 5-20; EN; such is automatic adaptation),” does not apply since Sweet does not disclose the limitation in claim 38 of a “prediction device for predicting the subsequent resource utilization...” Accordingly, Applicant believes claim 38 is neither anticipated nor rendered obvious in light of Sweet and is allowable over the prior art of record.

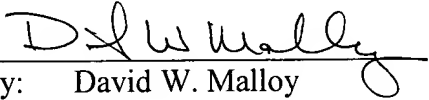
The rejection of Claim 39, wherein the Examiner states that Sweet discloses, *inter alia*, predicting the effects of adding the new device, based upon the monitored values of the resource utilization and the number of active devices (Sweet, c2, l 5-20; EN; such is automatic adaptation),” does not apply since Sweet does not disclose the limitation in claim 39 of “a forecasting device for identifying resource saturation...” Accordingly, Applicant believes claim 39 is neither anticipated nor rendered obvious in light of Sweet and is allowable over the prior art of record.

Claims 2-20, 22-30 and 32-37 depend from independent claims 1, 21, and 31 respectively. Accordingly, Applicant believes the dependent claims are allowable for at least the reasons given above for the independent claims.

CONCLUSION

Applicant respectfully submits that claims 1-40 and 42 as herein presented are allowable over the prior art of record, taken alone or in combination, and that the respective rejections be withdrawn. Applicant further respectfully submits that the application is hereby placed in condition for allowance, which action is earnestly solicited.

Respectfully submitted,


By: David W. Malloy
Reg. No. 56,652
Attorney for Applicants

F. CHAU & ASSOCIATES, LLC
130 Woodbury Road
Woodbury, New York 11797
Tel: (516) 692-8888
Fax: (516) 692-8889

FVD/DWM:mel